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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,619	01/14/2004	Joseph John Michalowicz	OSTEONICS 3.0-480	4800
530 7590 12/19/2006 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER MATTHEWS, WILLIAM H	
			ART UNIT	PAPER NUMBER
			3738	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/19/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/757,619

Applicant(s)

MICHALOWICZ, JOSEPH JOHN

Examiner

William H. Matthews (Howie)

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 23-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 23-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 11-24-06 have been fully considered but they are not persuasive. Applicant contends Volk is deficient because the Volk device, essentially, is not designed for bone surgery and is bulky and not tailored for use in the body. The Examiner disagrees with this analysis because the device disclosed by Volk provides every structural limitation required by the claims. While the device of Volk may not provide the best tool for bone surgery, it would inherently be capable of being used for surgery.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of claims 1 and 23 recite "said first portion having a surface adapted to be located adjacent a bone surface and a plurality of bone fastener apertures" which implies the first portion is adapted to be located adjacent the apertures and does not positively claim the apertures.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-12, 23-31, 33-45, 47-52 rejected under 35 U.S.C. 102(b) as being anticipated by Volk (US Pat# 4608898). Volk discloses a first portion (29) able to be fixed with respect to a bone surface, a second portion (20) rotably coupled to the first portion at a pivot point (30) with a guide having guide surfaces (22, 23) and a means for positioning the first and second portions relative each other being an arm (27) with a hole receiving a bolt (pin) (36) and, being separate from the pivot point, the rotation of portion 1 relative to portion 2 maintains function if portion 1 is attached to bone. The first portion has tabs (38) with pins (screws) going through holes as shown in Figure 1 as a means for connection or fixing to bone and a recess between the washers of nut (33) and bolt (32), which are through a notch (34), in said recess, the arm is received where the bolt (32) is a screw mounted on the 1st and 2nd portions via washers and nuts (33) through the notch (34), the notch also being an aperture in the first portion. Guideway (20) (2nd portion) has a slot, with planar surfaces, for receiving a cutting tool (saw 53) and can be used for the tibia or the angular movement allows for varying to any angle including varus/valgus angles. A manual angle adjustment element is within the notch (34) as nuts (33) and a screw (32) and is near the angle pointer (31) and is apart from the pivot point and may be loosened to allow for angle adjustment or tightened to lock portion 1 and 2 in relative position to each other. In reference to claim 37, the guide surfaces (23) may be regarded as the first and second ends of the second portion, where the pivot point of portion 1 and 2 is located on the first end of each portion and

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the angle adjustment engagement portion is located at the second end of the 1st portion.

The axis of the resection surface being parallel with the pivot axis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 32, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Volk (US Pat# 4608898) in view of Duffner (US Pat# 6796986) in further view of Goldin (US Pat# 4020929). Volk is explained supra, however Volk lacks a screw with a dimple to lock the arm in place. Duffner teaches a screw (175) to hold/lock pivoting arms of a guide in place (column 3, lines 35-45). Goldin teaches a screw with a dimple that slides into holes to lock a member in place (Figure 5 & 6). Goldin and Duffner also show that using a pin lock system is not a novel feature in the art. It would have been obvious to one of ordinary skill in the art at the time of the inventions to use the screw, as taught by Duffner & Goldin with the guide of Volk such that it provides the ability to lock the arm in place.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number

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is 571-272-4753. The examiner can normally be reached on Monday-Friday 10-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


William H. Matthews (Howie)
Examiner
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